

HAROLD G. HOPPE 5049
Pacific Guardian Center, Makai Tower
733 Bishop Street, Suite 2300
Honolulu, HI 96813
Telephone: (808) 528-1903
Facsimile: (808) 531-3860

JOHN R. HILLSMAN 71220
McGuinn, Hillsman & Palefsky
535 Pacific Ave
San Francisco, CA 94133
Telephone: (415) 421-9292

Attorneys for Claimants Dennis Claypool,
Sheryll Claypool, Scott Claypool and Kristen Claypool

RICHARD LESSER 5832
MICHELE NELSON BASS 5754
2730 Mauka Tower, Grosvenor Center
737 Bishop Street
Honolulu, HI 96813
Telephone: (808) 348-3529

Attorneys for Claimants Matthew Isham,
Roxanne Best Isham and Hayden Isham

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CLERK, U. S. DISTRICT COURT
DISTRICT OF HAWAII

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

In the Matter)

of)

Civil NO. CV05-00017 HG LEK
(Admiralty)

The Complaint of CAPTAIN)
ANDY'S SAILING, INC., a)
Hawaii corporation, as pro hac)
vice owner, and EVANS)
PACIFIC, LTD., a Hawaii)
corporation, as owner, of M/V)
SPIRIT OF KAUAI, O.N.)
995776, for exoneration from)
or limitation of liability.)

**STIPULATION PRESERVING
CAPTAIN ANDY'S SAILING, INC.'S
AND EVANS PACIFIC, LTD.'S
LIMITATION RIGHTS AND
APPORTIONING AGREED
LIMITATION FUND**

Exhibit "5"

WHEREAS Plaintiff CAPTAIN ANDY'S SAILING, INC. and EVANS PACIFIC, LTD. have prayed for limitation and/or exoneration under the Vessel Owners' Limitation of Liability Act ("the Act"), 46 U.S.C. §§ 181 *et seq.*, in connection with the marine casualty involving their tour vessel *M/V Spirit of Kauai* that occurred on or about July 20, 2004;

AND WHEREAS the undersigned Claimants wish to prosecute their respective claims against CAPTAIN ANDY'S ANDY'S SAILING, INC. and EVANS PACIFIC, LTD., before a jury, on the Civil Side of the above-captioned Court;

IT IS HEREBY STIPULATED AND AGREED, by the undersigned Claimants, acting by and through their respective attorneys that:

(1) CAPTAIN ANDY'S SAILING, INC. and EVANS PACIFIC, LTD. have the right to litigate the issue of whether they are entitled to limitation and/or exoneration from liability under the Act in this Court, and this Court has exclusive jurisdiction to determine said issues;

(2) The value of the limitation fund is Four Hundred Thousand Dollars and Zero Cents (\$400,000.00).

(3) Claimants will not seek a determination of the issues set forth in paragraph (1) above in any proceeding other than this case, and consent to waive any *res judicata* effect the decisions, rulings or judgments of any other forum might have on those issues, and further consent to waive the defense of issue preclusion

preclusion with respect to all matters reserved for determination by this Court;

(4) Claimants will not seek to enforce any judgment rendered in any judicial forum, whether against plaintiffs or another person or entity entitled to seek indemnity or contribution from plaintiffs by way of cross-claim or otherwise that would expose CAPTAIN ANDY'S SAILING, INC. and EVANS PACIFIC, LTD. to liability in excess of the limitation fund until such time as this Court has adjudicated plaintiffs' right to limit that liability;

(5) In the event this Court determines that CAPTAIN ANDY'S SAILING, INC. and EVANS PACIFIC, LTD. are entitled to limit their liability, any claim based upon fees and/or costs awarded against Plaintiffs and in favor of any party in any other judicial forum will have first priority against the limitation fund; and,

(6) In the event this Court determines that CAPTAIN ANDY'S SAILING, INC. and EVANS PACIFIC, LTD. are entitled to limit their liability, Claimants, and each of them, agree that the remainder of the limitation fund, if any, shall be equally apportioned among all of them, with each of them receiving a one-seventh share.

Dated: Jan. 19, 2006

JOHN R. HILLSMAN
McGuinn, Hillsman & Palefsky
Attorneys for Claimants
DENNIS CLAYPOOL,, individually and as
Guardian ad Litem for KRISTEN
CLAYPOOL, a minor, SHERYL
CLAYPOOL, and SCOTT CLAYPOOL

By: John R. Hillsman

Dated: 1-19-05

RICHARD A. LESSER
Attorneys for Claimants MATTHEW
ISHAM, individually and as Guardian Ad
Litem for HAYDEN ISHAM, a minor; and
ROXANNE BEST ISHAM

By: 
RICHARD A. LESSER

APPROVED AND SO ORDERED

UNITED STATES MAGISTRATE JUDGE

CIV NO. CV05-00017 HG LER
Stipulation Preserving Captain Andy's Sailing
Inc.'s and Evans Pacific, Ltd.'s Limitation Rights